A.F.R.

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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal No.1019 of 2003

Baijnath & another

- Versus -

Chandrika Prasad Sahu & others

And six other connected matters

ORDER FOR CONSIDERATION

Sd/-
L.C. BHADOO
Judge

HON'BLE MR. JUSTICE SUNIL KUMAR SINHA

I agree

Sd/-
Sunil Kumar Sinha
Judge
11-9-2007

POST FOR PRONOUNCEMENT OF ORDER ON 11TH SEPTEMBER, 2007

Sd/-
L.C.BHADOO
Judge

HIGH COURT OF CHHATTISGARH, BILASPUR

Division Bench: **Hon'ble Mr. L.C. Bhadoo and**
Hon'ble Mr. Sunil Kumar Sinha, JJ.

Miscellaneous Appeal No.1019 of 2003

APPELLANTS/: (Claimants)

1. Baijnath, S/o Chhedu Satnami, aged 38 years.
2. Champa, W/o Baijnath Satnami, aged 36 years.

Both are R/o Village Sohagpur, Police Station Sarsiwa, Tahsil Bilaigarh, District Raipur (C.G.)

- Versus -

RESPONDENTS:

1. Chandrika Prasad Sahu, S/o Mahettar Sahu, aged 30 years, Occupation Driver, R/o Sohagpur, Police Station Sarsiwan, Tahsil Bilaigarh, District Raipur (C.G.)
2. Awadh Ram Sahu, S/o Jaitram Sahu, aged 65 years, R/o Village Dhobnin, Police Station Sarsiwan, Tahsil Bilaigarh, District Raipur (C.G)
3. (a) Deshram, S/o Ramlal Sahu,

   (b) Motiram, S/o Ramlal Sahu,

   (c) Janak, S/o Ramlal Sahu,

   All are R/o Village Bade-Sajapali, Police Station Basna, District Mahasamund (C.G.)
4. The Oriental Insurance Company of India Ltd., through the Branch Manager, Madina Manzil, Medical College Road, Raipur (C.G.)

Miscellaneous Appeal No.1020 of 2003

APPELLANTS/: (Claimants)

1. Pila Dau, S/o Bisaju Ram Sahu, aged 42 years.
2. Aadharmati, W/o Pila Dau Sahu, aged 40 years.

Both are R/o Village Mudpar, Police Station Sarsiwa, Tahsil Bilaigarh, District Raipur (C.G.)

- Versus -

RESPONDENTS:

1. Chandrika Prasad Sahu, S/o Mahettar Sahu, aged 30 years, Occupation Driver, R/o Sohagpur, Police Station Sarsiwan, Tahsil Bilaigarh, District Raipur (C.G.)

2. Awadh Ram Sahu, S/o Jaitram Sahu, aged 65 years, R/o Village Dhobnin, Police Station Sarsiwan, Tahsil Bilaigarh, District Raipur (C.G)

3. (a) Deshram, S/o Ramlal Sahu,

(b) Motiram, S/o Ramlal Sahu,

(c) Janak, S/o Ramlal Sahu,

All are R/o Village Bade-Sajapali, Police Station Basna, District Mahasamund (C.G.)

4. The Oriental Insurance Company of India Ltd., through the Branch Manager, Madina Manzil, Medical College Road, Raipur (C.G.)

Miscellaneous Appeal No.1021 of 2003

APPELLANT/: (Claimant)

Jhingur Yadav, S/o Chawra Yadav, aged 25 years, R/o Village Sohagpur, Police Station Sarsiwa, Tahsil Bilaigarh, District Raipur (C.G.)

- Versus -

RESPONDENTS:

1. Chandrika Prasad Sahu, S/o Mahettar Sahu, aged 30 years, Occupation Driver, R/o Sohagpur, Police Station Sarsiwan, Tahsil Bilaigarh, District Raipur (C.G.)

2. Awadh Ram Sahu, S/o Jaitram Sahu, aged 65 years, R/o Village Dhobnin, Police Station Sarsiwan, Tahsil Bilaigarh, District Raipur (C.G)

3. (a) Deshram, S/o Ramlal Sahu,

(b) Motiram, S/o Ramlal Sahu,

(c) Janak, S/o Ramlal Sahu,

All are R/o Village Bade-Sajapali, Police Station Basna, District Mahasamund (C.G.)

4. The Oriental Insurance Company of India Ltd., through the Branch Manager, Madina Manzil, Medical College Road, Raipur (C.G.)

Present:

Mr. Shiv Kumar Guha, counsel for the appellants.

Mr. Anand Kesharwani, counsel for respondent No.1.

Mr. Manoj Paranjpe with Mr. Vaibhav Goverdhan, counsel for respondent No.2.

None present on behalf of respondent No.3.

Mr. H.S. Patel with Mr. Varunendra Mishra, counsel for respondent No.4.

Miscellaneous Appeal No.811 of 2003

APPELLANT/: (Owner)

Awadh Ram Sahu, S/o Sri Jait Ram Sahu, aged about 68 years, R/o Post Dhobni, Tahsil Bilaigarh, District Raipur (C.G.)

- Versus -

RESPONDENTS/: (Claimants)

1. Puk Ram Satnami, S/o Sri Kanhaiya, aged about 50 years, R/o Village Sohagpur, Post Sarsinwa, Tahsil Bilaigarh, District Raipur (C.G.)

2. Kalash Bai, W/o Sri Puk Ram Satnami, aged about 42 years, R/o Village Sohagpur, Post Sarsinwa, Tahsil Bilaigarh, District Raipur (C.G)

3. Chandrika Prasad Sahu, S/o Sri Mahettar Sahu, aged about 30 years, R/o Village Sohagpur, Police Station Sarsinwa, Tahsil Bilaigarh, District Raipur (C.G.)

4. The Oriental Insurance Company Limited, Divisional Office Madina Manzil, Medical College Road, Raipur (C.G.)

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Miscellaneous Appeal No.962 of 2003

APPELLANT: Awadh Ram Sahu, S/o Shri Jaitram Sahu, aged about 68 years, R/o Post Dhobni, Tahsil Bilaigarh, District Raipur (C.G.)

- Versus -

RESPONDENTS:

1. Piladau Sahu, aged about 42 years, S/o Bisahu.
2. Adharmati Sahu, aged about 36 years, W/o Piladau Sahu.
   Both R/o Village Mudpar, P.S. Sarsiva, Tahsil Bilaigarh, District Raipur (C.G)
3. Chandrika Prasad Sahu, S/o Mahettar Sahu, aged about 30 years, R/o Village Sohagpur, P.S. Sarsiva, Tahsil Bilaigarh, District Raipur (C.G.)
4. A. Deshram Sahu, S/o Ramlal Sahu, aged about 44 years.
   B. Motilal Sahu, S/o Janakram Sahu, aged about 51 years.
   C. Janak, S/o Ramlal Sahu, aged about 50 years.
   All above R/o Village Bade Sajapali, P.S. Basna, Distt. Mahasamund (C.G.)
5. The Oriental Insurance Company Limited, Divisional Office Madina Manzil, Medical College Road, Raipur (C.G.)

Present:

Mr. Manoj Paranjpe with Mr. Vaibhav Goverdhan, counsel for the appellant.

Mr. Vivek Rathore, counsel for respondents No.1 & 2 in M.A.No.811/2003.

Mr. Shiv Kumar Guha, counsel for respondents No.1 & 2 in M.A.No.962/2003.

Mr. Anand Kesharwani, counsel for respondent No.3.

Mr. H.S. Patel with Mr. Varunendra Mishra, counsel for respondent No.4 in M.A. No.811/2003 and counsel for respondent No.5 in M.A.No.962/2003.

None present on behalf of respondent No.4 in M.A.No.962/2003.

Miscellaneous Appeal No.1012 of 2003

APPELLANT: Awadhram Sahu, S/o Shri Jaitram Sahu, aged about 68 years, R/o Post Dhobni, Tahsil Bilaigarh, District Raipur (C.G.)

- Versus -

RESPONDENTS:

1. Jhingur Yadav, aged about 25 years, S/o Chhabra Yadav, R/o Village Sohagpur, P.S. Sarsiva, Tahsil Bilaigarh, District Raipur (C.G.)
2. Chandrika Prasad Sahu, S/o Mahettar Sahu, aged about 30 years, R/o Village Sohagpur, P.S. Sarsiva, Tahsil Bilaigarh, District Raipur (C.G.)
3. A. Deshram Sahu, S/o Ramlal Sahu, aged about 44 years.

   B. Motilal Sahu, S/o Janakram Sahu, aged about 51 years.

   C. Janak, S/o Ramlal Sahu, aged about 50 years.

   All above R/o Village Bade Sajapali, P.S. Basna, Distt. Mahasamund (C.G.)
4. The Oriental Insurance Company Limited, Divisional Office Madina Manzil, Medical College Road, Raipur (C.G.)

Miscellaneous Appeal No.1013 of 2003

APPELLANT: Awadh Ram Sahu, S/o Shri Jaitram Sahu, aged about 68 years, R/o Post Dhobni, Tahsil Bilaigarh, District Raipur (C.G.)

- Versus -

RESPONDENTS:

1. Baijnath Satnami, aged about 38 years, S/o Chhedulal.
2. Champa Bai Satnami, W/o Baijnath, aged about 36 years.

Both R/o Village Sohagpur, P.S. Sarsiva, Tahsil Bilaigarh, District Raipur (C.G.)

3. Chandrika Prasad Sahu, S/o Mahettar Sahu, aged about 30 years, R/o Village Sohagpur, P.S. Sarsiva, Tahsil Bilaigarh, District Raipur (C.G.)

4. A. Deshram Sahu, S/o Ramlal Sahu, aged about 44 years.

B. Motilal Sahu, S/o Janakram Sahu, aged about 51 years.

C. Janak, S/o Ramlal Sahu, aged about 50 years.

All above R/o Village Bade Sajapali, P.S. Basna, Distt. Mahasamund (C.G.)

5. The Oriental Insurance Company Limited, Divisional Office Madina Manzil, Medical College Road, Raipur (C.G.)

Present:

Mr. Manoj Paranjpe with Mr. Vaibhav Goverdhan, counsel for the appellant.

Mr. Shiv Kumar Guha, counsel for respondent No.1 in M.A.No.1012/2003 and counsel for respondents No.1 & 2 in M.A.No.1013/2003.

Mr. Anand Kesharwani, counsel for respondent No.2 in M.A.No.1012/2003 and counsel for respondent No.3 in M.A.No.1013/2003.

Mr. H.S. Patel with Mr. Varunendra Mishra, counsel for respondent No.4 in M.A. No.1012/2003 and counsel for respondent No.5 in M.A.No.1013/2003.

None present on behalf of respondent No.4 in M.A.No.1013/2003.

(Appeals under Section 173 of the Motor Vehicles Act, 1988)

ORDER

(Passed on 11th September, 2007)

The following order of the Court was passed by ***L.C. Bhadoo, J.***

1. The above miscellaneous appeals are being disposed of by this common order, as all these appeals are arising out of the same incident.

2. M.A.Nos.1019/2003, 1020/2003 and 1021/2003 have been filed by appellants Baijnath, Champa, Pila Dau, Aadharmati & Jhingur Yadav under Section 173 of the Motor Vehicles Act, 1988 questioning legality and correctness of the award dated 31-7-2003 passed by the 2nd Additional Motor Accidents Claims Tribunal, Baloda Bazaar in Claim Case Nos.31/2000, 28/2000 & 29/2000, on the ground that the compensation amount awarded to the appellants is much lower, whereas they are entitled for more compensation amount. M.A.Nos.811/2003, 962/2003, 1012/2003 & 1013/2003 have been filed by appellant Awadh Ram Sahu on the ground that the tractor trolley in question was insured with the Oriental Insurance Company Limited, therefore, liability for payment of the award ought to have been fixed on the Insurance Company instead of on the appellant.

3. Brief facts necessary for the disposal of these appeals are that in the intervening night of 11th & 12th May, 2000, stone slabs were loaded in the trolley bearing No.MP-23/G-9047 which was attached with the tractor bearing No.MP-23/G-9046 from the stone queries of Sohagpur (Dhobni). At about 12 in the midnight, the tractor started from the stone queries of Sohagpur for Tumin (Bhawarpur). The tractor was being driven by Chandrika Prasad Sahu in rash & negligent manner, therefore, when the tractor reached on culvert of Jharband trolley turned turtle. Tungnath Sahu, Rohit Kumar, Ghanshyam, Jhingur & Manbodh were sitting in the said trolley at the time of accident. Rohit Kumar, Tungnath Sahu & Ghanshyam died on the spot, whereas Jhingur & Manbodh sustained grievous injuries. Therefore, Baijnath & Champa, legal heirs of Rohit Kumar, filed Claim Case No.31/2000, whereas Pila Dau & Aadharmati, legal heirs of Tungnath Sahu, filed Claim Case No.28/2000, injured Jhingur filed Claim Case No.29/2000 and injured Manbodh filed Claim Case No.30/2000 before the 2nd Additional Motor Accidents Claims Tribunal, Baloda Bazaar. However, legal heirs/ parents of Ghanshyam namely, Pukram Satnami & Kalash Bai had filed Claim Case No.8/2000 before the 2nd Additional Motor Accidents Claims Tribunal, Mahasamund.

4. In the appeals filed by Awadhram Sahu, common question has been raised that the vehicle in question was insured with the Oriental Insurance Company, therefore, responsibility of compensation ought to have been fixed on the Insurance Company, as the tractor in question was insured for agricultural purposes, at the time of accident, stone slabs were being transported for the purpose of constructing platform around the tube well and for fixing the stone slabs at the bottom of water drain to channelise water in the farm house of Ustram, friend of son of Ramlal i.e. registered owner of the tractor trolley, as such, the tractor was being used for agricultural purposes. Further case was that the registered owner of the said tractor was Ramlal Sahu, who was son-in-law of Awadhram Sahu, and the tractor in question was sold by Ramlal Sahu to Awadhram Sahu. Whereas, reply of the Insurance Company was that the registered owner of the tractor was Ramlal Sahu who transferred the tractor to Awadhram Sahu without informing the Insurance Company. The tractor in question was being used for commercial purposes by Awadhram Sahu and his driver Chandrika Prasad Sahu, at the time of accident, whereas the tractor was insured for agricultural purposes. Therefore, there was breach of contract of insurance, as such, the Insurance Company is not liable to pay compensation.

5. We have heard learned counsel for the parties.

6. Mr. Manoj Paranjpe, learned counsel appearing on behalf of appellant Awadhram Sahu, at the outset, argued that even though Ramlal, who died during the pendency of claim petitions, was registered owner of the tractor, the tractor in question was sold by him to appellant Awadhram who is none else than father-in-law of Ramlal, therefore, he has taken the responsibility of accident and he is not challenging the award on that ground. Legal heirs of Ramlal namely, Deshram, Motiram & Janak have not challenged the award by filing appeal. Mr. Manoj Paranjpe further argued that at the time of accident, the tractor in question was transporting stone slabs for construction of platform around the tube well as well as for use of stone slabs at bottom of water drain in the agricultural farm of Ustram, friend of son of Ramlal, therefore, the tractor in question was being used for agricultural purposes, as such, there was no violation of the contract of

insurance. He placed reliance on the judgment of the M.P. High Court in the matter of **Narendra Singh and another v. Govind and another**[1].

7. Mr. Manoj Paranjpe further argued that as far as breach of contract of insurance is concerned, as per settled law, burden of proof is on the Insurance Company to prove the breach of policy. In this case, the Insurance Company has not adduced any evidence regarding breach of contract of insurance, therefore, on this ground, Awadhram cannot be held responsible for payment of compensation amount.

8. On the other hand, Mr. H.S. Patel, learned counsel appearing on behalf of the Insurance Company, argued that it is admitted position that the tractor was transporting stone slabs and the said act cannot be said to be for agricultural purposes. He further argued that Manbodh & Jhingur have stated that the tractor was transporting the stone slabs on hire basis, therefore, the tractor trolley was being used for commercial purpose. He also argued that as per the registration certificate (Ex.4) of the tractor, sitting capacity (including the driver) of the tractor was one and as per Ex.N-5, sitting capacity of the trolley (including the driver) was NIL, whereas contrary to the contract of insurance, at the time of accident, five labours namely, Tungnath Sahu, Rohit Kumar, Jhingur, Manbodh & Ghanshyam were sitting in the trolley who met with accident, therefore, the Insurance Company cannot be held responsible.

9. Having heard learned counsel for the parties, we have perused the record and the evidence available on record. Learned Tribunal has held that the accident occurred on account of rash & negligent driving by Chandrika Prasad Sahu. Learned Tribunal has further held that the tractor trolley was being used for transportation of stone slabs for business purpose, therefore, there is breach of policy, as such, the Insurance Company is not liable for payment of compensation amount. Ultimately, the Tribunal has held that driver Chandrika Prasad Sahu, Awadhram Sahu, Deshram, Motiram & Janak are responsible for payment of compensation amount.

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[1] 2006 ACJ 2656

10. It is admitted position that the tractor trolley was insured for agricultural purposes. It is also admitted position that at the time of accident, the tractor trolley in question was being used for transportation of stone slabs from Sohagpur (Dhobni) to Tumin (Bhawarpur) to the agricultural farm of Ustram, friend of son of Ramlal, and the said stone slabs were to be used for constructing platform near the tube well as also for fixing them at the bottom of water drain of the tube well. The tube well was installed for pumping out underground water for use of agricultural purposes and the drain on the bottom of which stone slabs were to be fixed was also meant for carrying water to the field from the tube well. Therefore, in view of these facts, we are of the considered opinion that for all purposes, stone slabs were being transported for use of agricultural purposes. We are fortified in our view by the judgment of the M.P. High Court in the matter of Narendra Singh (supra). In that case also the tractor trolley was being used for transporting bricks for construction of shed on the land for keeping agricultural implements. The M.P. High Court held that the bricks were being transported for the purpose of agricultural use.

11. Manbodh Satnami in his evidence has categorically stated that on 12-5-2000 the tractor was being driven by Chandrika, it was going from Sohagpur to Basna, he along with Rohit, Manbodh, Jhingur, Ghanshyam & Tungnath were sitting in the trolley, they were working as labourers, by the tractor they were transporting stone slabs, he was working as labourer. He has further stated that it is correct to say that stone slabs were to be fixed around the tube well, stone slabs were not being transported for owner, but same were being transported on hire basis and the driver of the tractor also collected rent for transportation of stone slabs. Chandrika Prasad, driver of the tractor, has also stated in his evidence that at the time of accident, stone slabs were there in the trolley, stone slabs were being transported from Sohagpur to Tumin (Bhawarpur) to the agricultural farm of Ustram for preparing platform around the tube well. Even Awadhram Sahu, the appellant herein, himself has admitted in his evidence that stone slabs were being transported in the trolley to the agricultural farm of Ustram, son of friend of his son-in-law Late Ramlal, the registered owner of the tractor, and stone slabs were being transported for construction of platform around the tube

well. Therefore, from the above evidence it is established that at the time of accident, the tractor trolley was being used for agricultural purposes.

12. Now, coming to the argument raised by Mr. Paranjpe, regarding breach of contract of insurance, the Insurance Company ought to have established breach on the part of owner of the vehicle and burden on proof was on them. But the Insurance Company has not led any evidence in order to establish that the tractor trolley in question was being used for hire or reward. In the matter of **National Insurance Co. Ltd. v. Swaran Singh and others**[2] the Apex Court held that

> "The Insurance Company is required to prove the breach of the condition of the contract of insurance by cogent evidence. In the event the Insurance Company fails to prove that there has been breach of conditions of the policy on the part of the insured, the Insurance Company cannot be absolved of its liability. This Court did not lay down a degree of proof, but held that the parties alleging the breach must be held to have succeeded in establishing the breach of the condition of the contract of insurance, on the part of the Insurance Company by discharging its burden of proof. The Tribunal, must arrive at a finding on the basis of the materials available on the records."

13. Further, in the matter of **National Insurance Co. Ltd. v. Laxmi Narain Dhut**[3] the Apex Court held that

> "An insurer is entitled to raise a defence in a claim petition filed under Section 163-A or Section 166 of the Motor Vehicles Act, 1988, *inter alia*, in terms of Section 149 (2) (a) (ii) of the said Act.
>
> Insurance companies, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish "breach" on the part of the owner of the vehicle; the burden of proof wherefore would be on them.
>
> The court cannot lay down any criteria as to how the said burden would be discharged, inasmuch as the same would depend upon the facts and circumstances of each case. "

14. Therefore, the insurer can raise a defence under Section 149 (2) (a) (i) (a) of the Act, 1988 that the vehicle in question at the time of accident was being used for

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[2] 2004 AIR SCW 663
[3] 2007 AIR SCW 2279

hire or reward & the vehicle on the date of accident was not insured for use of commercial purpose.

15. It is admitted position that the Insurance Company has not adduced any evidence for establishing the defence that there was a breach of contract of insurance, that the tractor trolley was being used for hire or reward. As has been mentioned earlier, the Apex Court in Swaran Singh's case held that the Insurance Company is required to prove the breach of the condition of the contract of insurance by cogent evidence. But the Court did not lay down a degree of proof and held that the Company must have succeeded in establishing the breach of the condition of the contract of insurance and the Tribunal, must arrive at a finding on the basis of the materials available on the records.

16. In this connection, admittedly Chandrika Prasad, driver of the tractor, in his evidence has stated that at the time of accident, Ghanshyam, Rohit, Tungnath, Jhingur & Manbodh were sitting in the trolley. Manbodh has categorically stated that it is correct that stone slabs were not being transported for owner of the tractor, but the same were being transported on hire. He has further stated that it is also correct that the driver collected hire amount for transporting stone slabs. Even Ustram, for whom stone slabs were being transported, in his examination-in-chief has stated that his father and father of owner of the tractor were friends, therefore, he was not required to charge the price. But in cross-examination, he has stated that he was to pay money of stone slabs as also the expenses for bringing stone to Chandrika Prasad. He has further stated that it is correct that he was paying expenses of tractor, had the owner of the tractor refused to accept money, he would have definitely paid diesel expenses.

17. Jhingur, the appellant/claimant herein, in his evidence (cross-examination para 9) has categorically stated that it is correct to say that stone slabs were being transported for another person. It is also correct to say that the person for whom stone slabs were transported had paid hire charges.

18. Therefore, in the evidence of Manbodh & Jhingur, who were sitting in the trolley at the time of accident and working as labourers for transporting stone slabs, it has come that stone slabs were being transported on hire basis. Even Ustram, for whom stone slabs were being transported, has also stated in his cross-

examination that he was required to pay for transportation, had the owner of the tractor not accepted the amount, then he would have atleast paid the expenses of tractor. Therefore, from the evidence of Jhingur & Manbodh, who were working on the tractor, it is established that at the time of accident, the tractor trolley was being used on hire basis.

19. In the circumstances, even if evidence has not been adduced by the Insurance Company, in cross-examination of the claimants' witnesses defence counsel has been able to bring on record that the tractor trolley in question was being used on hire basis. Hence, we are of the considered opinion that on the basis of the material available on record, as has been held by the Apex Court in Swaran Singh's case, the Insurance Company has been able to discharge its burden regarding breach of the contract of insurance. In order to discharge burden it is not necessary that burden can be discharged only by adducing evidence by the party. Burden can be discharged based on any material on record, documents available on record or by bringing facts on record in cross-examination of witnesses of the opposite party. Sufficient material is available on record in cross-examination of the claimants' witnesses and also the evidence of the driver of the tractor. Even from the evidence of Ustram for whom stone slabs were being transported, it can safely be held that tractor trolley was being used on hire basis.

20. Therefore, it is established the tractor trolley in question was being used in breach of contract of insurance and the Insurance Company has discharged its burden, as such, the Insurance Company is not liable to pay compensation amount.

21. Mr. H.S. Patel, learned counsel appearing on behalf of the Insurance Company, has argued that at the time of accident two injured and three deceased (all labours), who met with accidental death, were travelling in the trolley and there was no insurance for carrying labourers in the trolley, as such, the Insurance Company is not liable to pay compensation amount.

22. Perusal of the registration certificate of the tractor (Ex.4) reveals that only the driver was entitled to sit on the tractor and no other person was entitled to travel on the tractor. Similarly, perusal of the registration certificate of the trolley (Ex.N-5) also reveals that not even a single person was entitled to travel

in the trolley. Therefore, no premium was paid by the owner of the tractor for carrying labourers in the tractor trolley. The labourers were travelling in the tractor trolley contrary to the contract of insurance. For this reason also, the Insurance Company is not liable to pay the compensation amount. We are fortified in our view by the judgment of the Apex Court in the matter of **Oriental Insurance Co. Ltd. v. Brij Mohan and others**[4].

23. In view of the foregoing reasons and on account of the breach of contract of insurance, we are of the considered opinion that the respondent Insurance Company is not liable to pay compensation amount and we do not find any illegality or infirmity in the award to this extent. Therefore, the appeals filed by Awadhram Sahu namely, M.A.Nos.811/2003, 962/2003, 1012/2003 & 1013/2003 are liable to be dismissed.

M.A.No.1019/2003

24. This appeal has been preferred by claimants Baijnath & Champa, father & mother of deceased Rohit Kumar, respectively, against the death of their son Rohit Kumar, aged about 18 years, challenging the award dated 31-7-2003 passed in Claim Case No.31/2000.

25. Mr. Shiv Kumar Guha, learned counsel appearing for the appellants/claimants, argued that annual income of Rohit Kumar has been assessed at Rs.8,100/- which is very much on lower side and even dependency has been assessed at Rs.2,700/- which is also on lower side.

26. On the other hand, learned counsel for the respondents submitted that just and reasonable compensation has been awarded by the Tribunal to the appellants.

27. We have perused the evidence. Baijnath, father of deceased Rohit Kumar, has stated that Rohit Kumar used to earn Rs.60-65/- per day and Champa, mother of deceased Rohit Kumar, has also stated that her son used to earn Rs.60-70/- per day, whereas, the Tribunal has assessed the income of deceased Rohit Kumar at Rs.45/- per day. In the year 2000, a daily wager used to earn atleast Rs.50/- per day and a daily wager is expected to get work for atleast 20 days in a month. Therefore, learned Tribunal ought to have assessed monthly income of Rohit

[4] 2007 AIR SCW 3734

Kumar at Rs.1,000/-, thereby he used to earn Rs.12,000/- per year. Age of the father of the deceased namely, Baijnath was 38 years at the time of accident, whereas age of the mother of the deceased namely, Champa was 36 years, thereby the Tribunal has rightly applied the multiplier of 16. After deducting 1/3rd from 12,000, on account of personal expenses of the deceased, total loss of dependency comes to Rs.8,000/- per annum. By applying the multiplier of 16 to 8,000, total amount of loss of dependency comes to Rs.1,28,000/-.

28. Therefore, the claimants are entitled for Rs.1,28,000/- against the head 'loss of dependency', whereas, the Tribunal has awarded only Rs.43,200/-. Hence, the claimants are entitled for Rs.84,800/- (1,28,000 - 43,200 = 84,800) in addition to what has been awarded by the Tribunal against loss of dependency and they shall also be entitled for interest at the rate of 6% per annum on that amount from the date of filing of the claim petition i.e. 1-7-2000, till the realization of the amount.

M.A.No.1020/2003

29. This appeal has been preferred by claimants Pila Dau & Aadharmati, father & mother of deceased Tungnath, respectively, against the death of their son Tungnath, aged about 24 years, challenging the award dated 31-7-2003 passed in Claim Case No.28/2000.

30. Learned counsel for the appellants argued that learned Tribunal has assessed income of deceased Tungnath on lower side, even yearly dependency of the claimants has been assessed at Rs.2,700/- only and that has been assessed much on lower side.

31. On the other hand, learned counsel for the respondents submitted that the Tribunal has awarded just and reasonable compensation, therefore, no enhancement is required.

32. In the claim case filed by the father of Tungnath namely, Pila Dau & mother Aadharmati, they have claimed dependency to the tune of Rs.14,76,000/-. Aadharmati in her evidence has stated that Tungnath was a graduate, he was 24 years of age at the time of death and was working as labour. Pila Dau, father of the deceased, has stated that his son was earning about Rs.100/- per day.

Learned Tribunal has assessed daily earning of Tungnath at Rs.45/-. The Tribunal further held that Tungnath used to earn only six months in a year. This finding of the Tribunal appears to be unjust. In the year 2000, minimum wage of a labour was Rs.50/- per day and a daily wager used to get work atleast for 20 days in a month, thereby Tungnath used to earn Rs.1,000/- per month. The deceased was a graduate also. Therefore, his yearly earning comes to Rs.12,000/-. At the time of death of Tungnath, age of Pila Dau, father of Tungnath, was 42 years and age of Aadharmati, mother of Tungnath, was 40 years. Therefore, learned Tribunal ought to have applied the multiplier of 15 instead of 17. After deducting 1/3rd from 12,000, on account of personal expenses of the deceased, total loss of dependency comes to Rs.8,000/- per annum. By applying the multiplier of 15 to 8,000, total amount of loss of dependency comes to Rs.1,20,000/-. Compensation awarded by the Tribunal on other heads i.e. love & affection, funeral expenses, loss of estate and awarding Rs.15,000/- over & above the other heads being a graduate, requires no change.

33. Against loss of dependency, the Tribunal has awarded Rs.45,900/-, whereas, the Tribunal ought to have awarded Rs.1,20,000/-. Therefore, against the head 'loss of dependency', the claimants are entitled for Rs.74,100/- (1,20,000 - 45,900 = 74,100) more, as such they are entitled for additional amount of Rs.74,100/- in addition to what has been awarded by the Tribunal against the said head. The claimants shall be entitled to interest at the rate of 6% per annum on this amount with effect from 1-7-2000 i.e. the date of filing of the claim petition, till the realization of the amount.

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34. This appeal has been preferred by claimant Jhingur Yadav challenging the award dated 31-7-2003 passed in Claim Case No.29/2000, for enhancement of the compensation amount.

35. Learned counsel for the appellant argued that learned Tribunal has not awarded just and reasonable amount of compensation in favour of appellant Jhingur Yadav, as he sustained fracture of bones of both the hands, he remained in hospital for about 12 days and only an amount of Rs.8,430/- has been awarded against conveyance & medical charges, as also Rs.5,000/- against injuries. The appellant

could not work for about three months on account of fracture injuries, there was loss of income, as also no amount has been awarded for special diet, even no amount has been awarded for pain & suffering and less amount has been awarded for medical expenses.

36. On the other hand, learned counsel for the respondents argued that just and reasonable amount has been awarded to the claimant and no enhancement is required.

37. Perusal of the claim case shows that Jhingur Yadav claimed Rs.15,000/- for special diet, Rs.50,000/- for future loss, Rs.35,000/- for pain & suffering and Rs.10,80,000/- for loss of income. In his evidence, he has stated that he was admitted in Mekahara Hospital, Raipur, where he received treatment for about one month, he used to earn Rs.100-150/- per day, after the accident, he is not able to work and he has spent about Rs.25,000/- for his treatment.

38. Having heard learned counsel for the parties, we have perused the record. As far as the amount awarded by the Tribunal under the head 'conveyance & medical expenses', no sufficient material or evidence was placed on record by the claimant. Therefore, on that count, just and reasonable amount has been awarded. At the time of accident, the claimant was working as labour on daily wages. The accident took place in the year 2000 and during that period in the ordinary course, a daily wager was expected to get about Rs.50/- per day. Normally, a daily wager gets work for about 20 days in a month. Therefore, monthly earning of the claimant comes to Rs.1,000/-. Bones of both his hands were fractured and he remained in the hospital for about 12 days. He has stated that he received treatment for about one month, thereafter, he is not able to work. Looking to the grievous injuries sustained by the claimant i.e. fracture of bones of both the hands, it is but natural that atleast he was not able to work for 4 months. Therefore, under the head 'loss of income', the claimant is entitled to Rs.4,000/-. On account of injuries sustained by the claimant, he remained in hospital, thereafter, also he received treatment, therefore, he was required to take special diet for early recovery and no amount has been awarded by the Tribunal under that head. In the circumstances, we are of the considered opinion

that looking to the nature of injuries, the Tribunal ought to have awarded him atleast Rs.3,000/- against the head 'special diet'.

39. The claimant suffered fracture of bones of both the hands, he suffered pain and other difficulties viz., mental agony and he was not able to earn to feed his family members. Therefore, he was entitled for atleast Rs.5,000/- more under the head 'pain & suffering'.

40. In view of the foregoing reasons, the claimant is entitled for Rs.12,000/- (4,000 + 3,000 + 5,000 = 12,000) in addition to the amount already awarded by the Tribunal i.e. Rs.13,430/-. He shall be entitled for interest on this amount at the rate of 6% per annum from the date of filing of the claim petition i.e. 1-7-2000, till the realization of the amount.

41. In the result,

a. The appeals filed by Awadhram Sahu namely, M.A.Nos.811/2003, 962/2003, 1012/2003 & 1013/2003 are dismissed being devoid of merit.

b. The appeals filed by Baijnath & Champa (M.A.No.1019/2003), Pila Dau & Aadharmati (M.A.No.1020/2003) and Jhingur Yadav (M.A.No.1021/2003) are allowed.

c. Baijnath & Champa are awarded an amount of Rs.84,800/- in addition to the amount already awarded by the Tribunal along with interest at the rate of 6% per annum from 1-7-2000, till its realization.

d. Pila Dau & Aadharmati are awarded an amount of Rs.74,100/- in addition to the amount already awarded by the Tribunal along with interest at the rate of 6% per annum from 1-7-2000, till its realization.

e. Jhingur Yadav is awarded an amount of Rs.12,000/- in addition to the amount already awarded by the Tribunal along with interest at the rate of 6% per annum from 1-7-2000, till its realization.

f. Being benevolent legislation and that the claimants are poor labours who have lost their bread earner in the accident, in larger interest it is directed that in the first instance, the enhanced amount shall be paid by the Insurance Company to the claimants, in turn, the Insurance Company

can recover the said amount from Awadhram, Deshram, Motiram, Janak & Chandrika Prasad Sahu.

9. The appellants/claimants in M.A.Nos.1019/2003, 1020/2003 & 1021/2003 shall also be entitled for the cost of the appeals.

Sd/-
L.C.BHADOO
Judge
11-9-2007

Sdl-
Sunil Kumar Sinha
Judge
11-9-2007

Soma